

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Action Community Television Broadcasting) Facility ID No. 168101
Network, Inc.) FRN No. 0006208854
) Acct. No. 201641420022
Application for Renewal of License For Class A) File No. BRDTA-20121203AGQ
Television Station WHIG-CD)
Rocky Mount, North Carolina)

ORDER

Adopted: May 8, 2017

Released: May 8, 2017

By the Commission:

1. In this Order, we adopt the attached Consent Decree entered into between the Commission and Action Community Television Broadcasting Network, Inc. (Action TV). The Consent Decree resolves issues raised in our review of the above-captioned application for license renewal for television station WHIG-CD, Rocky Mount, North Carolina (Station), specifically regarding Action TV’s compliance at the Station, during its previous license term, with: (1) Section 73.3526 of the Commission’s rules (Rules), which, inter alia, requires broadcast stations to prepare and place certain documents in their online electronic local public inspection file, including but not limited to quarterly TV issues/programs lists and Children’s Television Programming Reports;1 (2) Section 73.3539(a) of the Rules, which requires the filing of an application for renewal of a station’s license no later than the first day of the fourth full calendar month prior to the expiration of the existing license;2 (3) Section 301 of the Communications Act of 1934, as amended (Act), which requires a licensee to have a valid instrument of authorization to transmit a broadcast signal;3 and (4) Section 73.3514(a) of the Rules, which requires applicants to provide all necessary information in any application filed with the Commission;4 and (5) various other filing requirements including Section 73.3615 of the Rules, which requires the filing of a biennial ownership report,5 Section 73.2080(f)(1), which requires licensees to file an EEO Report (FCC Form 396) upon filing of their license renewal applications,6 and Section 73.624(g) of the Rules, which requires licensees to file an Ancillary Services Report on an annual basis.7 Based on a review of the Station’s Children’s Television Programming reports for the first quarter of 2012 through fourth quarter of 2013, staff also inquired whether the Station met its children’s television programming obligations required by the Children’s Television Act of 1990, as implemented by Section 73.671 of the Rules. A copy of the Consent Decree is attached hereto and incorporated by reference.

1 47 C.F.R. § 73.3526.

2 47 C.F.R. § 73.3539(a).

3 47 USC § 301.

4 47 C.F.R. § 73.3514(a).

5 47 C.F.R. § 73.3615.

6 47 C.F.R. § 73.2080(f)(1).

7 47 C.F.R. § 73.624(g).

2. After reviewing its terms, we find that the public interest would be served by adopting the Consent Decree. We conclude that there are no substantial or material questions of fact regarding Action TV's qualifications to remain a Commission licensee. Although we conclude that the Consent Decree contains appropriate terms and conditions, after reviewing the record before us, we believe that the grant of a short-term renewal is appropriate in order to better ensure the Licensee's ongoing compliance with the Rules and the Act.⁸ Accordingly, we direct the Media Bureau to grant the renewal application, File No. BRDTA-20121203AGQ, and renew the Station's license for a period of two years pursuant to Section 309(k)(2) of the Act—conditioned upon Action TV fully and timely satisfying its obligation, pursuant to paragraph 18 of the Consent Decree, to make the Settlement Payment in the amount and manner called for by paragraph 20 of the Consent Decree. As a result, we need not determine whether Action TV committed “serious violations” of our rules or violations that constituted a “pattern of abuse” for purposes of Section 309(k)(1).⁹

3. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) of the Act,¹⁰ the Consent Decree attached to this Order IS ADOPTED.

4. IT IS FURTHER ORDERED that the investigation by the Commission into the matters discussed above and in connection with this station IS TERMINATED.

5. IT IS FURTHER ORDERED that a copy of this Order and Consent Decree shall be sent by both First Class mail and Certified Mail, Return Receipt Requested, to Action Community Television Broadcasting Network, Inc., 1701 Sunset Blvd, Suite 205, Rocky Mount, NC 27804, and to its counsel Barry D. Wood, 3300 Fairfax Drive, Suite 202 Arlington, VA 22201.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸ Section 309(k)(1) of the Act states that the Commission shall grant a license renewal application “if it finds, with respect to that station, during the preceding term of its license—(a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of the Act or Commission rules or regulations which, taken together, would constitute a pattern of abuse.” 47 U.S.C. § 309(k)(1). Section 309(k)(2) of the Act states, however, that if the licensee fails to meet this three-part standard, the Commission may deny the application—after notice and comment, and opportunity for hearing under Section 309(e) of the Act—“or grant the application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.” 47 U.S.C. § 309(k)(2).

⁹ See *Shareholders of Univision Communications Inc. et al.*, Memorandum Opinion and Order, 22 FCC Rcd 5842, 5859, n.113 (2007)(“Given our finding that the grant of the renewal application is warranted under Section 309(k)(2) of the Act because the consent decree contains appropriate terms and conditions, we need not determine whether Univision committed ‘serious violations’ of our rules or violations that constituted ‘a pattern of abuse’ for purposes of Section 309(k)(1)).”

¹⁰ 47 U.S.C. § 154(i).

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Action Community Television Broadcasting)	Facility ID No. 168101
Network, Inc.)	FRN No. 0006208854
Application for Renewal of License For Class A)	Acct. No. 201641420022
Television Station WHIG-CD)	File No. BRDTA-20121203AGQ
Rocky Mount, North Carolina)	

CONSENT DECREE

1. The Federal Communications Commission (Commission) and Action Community Television Broadcasting Network, Inc. (Action TV), licensee of station WHIG-CD, Rocky Mount, North Carolina, hereby enter into this Consent Decree for the purpose of resolving (i) the Commission’s investigation of Action TV’s compliance, during the Station’s previous license term, with the Children’s Television Act of 1990 (CTA),¹ Sections 73.671, 73.3526, 73.3539(a), 73.3514(a), 73.624(g), 73.2080(f)(1), and 73.3615 of the Commission’s rules (Rules),² and Section 301 of the Communications Act of 1934, as amended (Act), and (ii) Action TV’s pending license renewal application, File No. BRDTA-20121203AGQ.

I. DEFINITIONS

2. For the purposes of this Consent Decree and Compliance Plan, the following definitions shall apply:

- a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- b) “Action TV” means Action Community Television Broadcasting Network, Inc. and its subsidiaries, affiliates, successors, assigns, and/or transferees.
- c) “Adopting Order” means the Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- d) “Bureau” means the Media Bureau of the Federal Communications Commission.
- e) “Class A Eligibility Certification” means documentation demonstrating compliance with the Station’s ongoing Class A requirements pursuant to 47 C.F.R. § 73.6001 *et seq.*, as required by 47 C.F.R. § 73.3526(e)(17).
- f) “Commercial Limit Certification” means documentation demonstrating compliance with the Commission’s children’s programming commercial limit rules pursuant to 47 C.F.R. § 73.670, as required by 47 C.F.R. § 73.3526(e)(11)(ii).
- g) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
- h) “Communications Laws” means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Action TV is subject by virtue of being a Commission licensee, and/or controlling party of a Commission licensee, including but not limited to 47 C.F.R. §§ 73.671, 73.3526, 73.3539(a), 73.3514(a), 73.624(g), 73.2080(f)(1), and 73.3615, the Act and the CTA.

¹ Pub L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, and 394; 47 C.F.R. § 73.3526.

² 47 C.F.R. §§ 73.671, 73.3526 and 73.624(g), 73.3539(a), 73.2080(f)(1), and 73.3615.

- i) “CTA” means the Children’s Television Act of 1990, Pub L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b, and 394.
- j) “Division” means the Video Division of the Bureau.
- k) “Effective Date” means the date on which the Commission releases the Adopting Order.
- l) “Investigation” means the Bureau’s investigation of Action TV’s potential violations of the CTA, 47 C.F.R. §§ 73.671, 73.3526, 73.3539(a), 73.3514(a), 73.624(g), 73.2080(f)(1), and 73.3615, and 47 U.S.C. § 301.
- m) “License Renewal Application” or “Application” means the license renewal application (FCC Form 303-S) for station WHIG-CD, Rocky Mount, North Carolina, File No. BRDTA-20121203AGQ.
- n) “Parties” means Action TV and the Commission, each of which is a “Party.”
- o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- p) “Station” means the broadcast television station WHIG-CD, Rocky Mount, North Carolina.

II. BACKGROUND

3. On December 3, 2012, the Commission accepted for filing Action TV’s License Renewal Application.³ In reviewing the Application, staff subsequently discovered that Action TV had failed to respond to the questions listed in Section IV of the Application. Additionally, a review of the Station’s electronic public inspection file (e-pif) revealed that certain required documents were either missing or not filed in a timely manner.⁴ Following a series of informal inquiries from Division staff concerning these matters, Action TV amended its Application on July 14, 2014.⁵ The Investigation revealed that, during the previous license term of the Station, Action TV failed to (1) timely file its Children’s Television Programming Reports (FCC form 398) for a period of twenty-two (22) quarters, in violation of Section 73.3526 of the Rules, and failed to place in the Station’s e-pif copies of required public file documents, including TV issues/program lists, Commercial Limit Certifications, and Class A Eligibility Certifications; (2) furnish all required information in its License Renewal Application, as required by Section 73.3514(a) of the Rules, by failing to answer all required questions; (3) timely file the License Renewal Application, as required by Section 73.3539(a) of the Rules; (4) because Action TV had failed to

³ Because Action TV’s license renewal application was filed in the Commission’s Consolidated Database System (CDBS) on Saturday, December 1, 2012, which is considered a holiday under the Commission’s rules, *see* 47 C.F.R. § 1.4(e)(1), it was not assigned an application number until December 3, 2012. *See infra* paras. 7-8.

⁴ Beginning on the date of its application for a Class A license and thereafter, the *Community Broadcaster and Protection Act of 1999*, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), *codified at* 47 U.S.C. § 336(f) (CBPA), requires that a station must be “in compliance with the Commission’s operating rules for full-power television stations. 47 U.S.C. § 336(f)(2)(A)(ii). In implementing the CBPA and establishing the Class A television service, the Commission applied to Class A licensees all Part 73 regulations except for those that could not apply for technical or other reasons. Among the Part 73 requirements that apply to Class A licensees are the rules governing informational and educational children’s programming, the limits on commercialization during children’s programming, and a station’s local public inspection file. *In the Matter of Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6366 (2000), Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8254-56 (2001) (*MO&O on Recon.*); 47 C.F.R. § 73.6026. Class A television licensees are also subject to the regulations regarding fines and penalties applicable to full power television stations, and are subject to loss of Class A status if they fail to meet these ongoing program service and operating requirements. *MO&O on Recon.*, 16 FCC Rcd at 8257.

⁵ *See* License Renewal Application, Attachment 1 (Portions of Application Being Revised) and Attachment 6 (FCC Violations in the Current License Term).

timely file its License Renewal Application prior to expiration of the Station's license, comply with Section 301 of the Act; and (5) comply with various other filing requirements including Section 73.3615 of the Rules, which requires the filing of a Biennial Ownership Report, Section 73.2080(f)(1), which requires licensees to file an EEO Report (FCC Form 396) upon filing of their license renewal applications, and Section 73.624(g) of the Rules, which requires licensees to file an Ancillary Services Report on an annual basis. A review of the Station's Children's Television Programming Reports also raises questions as to whether, from first quarter of 2012 through fourth quarter of 2013, the Station met its children's television programming obligations as required by the CTA and implemented by Section 73.671 of the Rules.

A. Local Public Inspection File Requirements

4. Section 73.3526 of the Rules requires each commercial broadcast licensee to maintain a public file containing certain materials and information related to a station's operations. Thus, Section 73.3526(e)(11)(i) requires every commercial television licensee to place in its public file, on a quarterly basis, a TV issues/programs list which details programs that have provided the station's most significant treatment of community issues during the preceding three-month period, which must include a brief narrative of the issue addressed, as well as the time, date, duration, and title of each program that addressed the issue. Section 73.3526(e)(11)(ii) requires each such licensee to prepare and place in its public inspection file, on a quarterly basis, records sufficient to substantiate the Station's certification, in its license renewal application, of compliance with the commercial limits on children's programming. Section 73.3526(e)(11)(iii) requires each such licensee to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it made during that quarter to serve the educational and informational needs of children. Licensees must file the reports with the Commission and place them in their public file by the tenth day of the succeeding calendar quarter. Copies of these documents must be retained until final action has been taken on the station's next license renewal application. That subsection also requires that licensees publicize the existence and location of the reports. Additionally, Section 73.3526(e)(17) requires Class A licensees to place in their public files documents sufficient to demonstrate that their Class A television station is continuing to meet the eligibility requirements set forth in section 73.6001 of the Rules.

5. In 2012, the Commission adopted Section 73.3526(b)(2) of the Rules requiring commercial television licensees, including Class A stations,⁶ to upload elements of stations' physical public file to an on-line Commission hosted website (*i.e.*, a Station's e-pif).⁷ The Commission's e-pif requirement was implemented as a means to modernize the way that television broadcasters "inform the public about how they are serving their communities...."⁸ Broadcasters' e-pif requirements were phased in between August 2012 and February 2013. Beginning August 2, 2012, stations were required to post any document that would otherwise be placed in a station's public file, with limited exception, to their e-pif on a going-forward basis. By February 4, 2013, stations were required with limited exception to upload to their e-pif those documents that were already in their physical public file prior to August 2, 2012.⁹ Under Section 73.3526(b)(2) of the Rules, copies of a station's Commercial Limit Certifications,

⁶ See 47 C.F.R. § 73.3526(a)(2).

⁷ See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children's Television Programming Report*, Second Report and Order, 27 FCC Rcd 4535 (2012) ("*Second R&O*") (requiring broadcast television stations to post their public inspection files, with limited exception, to an online Commission-hosted database).

⁸ *Second R&O*, 27 FCC Rcd at 4536.

⁹ See *Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, 27 FCC Rcd 7478 (2012) (announcing the effective date of the electronic public file rule); *Television Broadcast Stations Reminded of Their Online Public Inspection File Obligations*, Public Notice, 27 FCC Rcd 15315 (2012) (reminding station's to upload copies of existing public file documents to their electronic public file);

(continued...)

Class A Eligibility Certifications, and TV issues/programs lists, among other items, must be placed in its e-pif.

6. Action TV admits to having failed to either timely prepare or place in the Station's e-pif copies of these documents during the previous license term of the Station.¹⁰ Specifically, Action TV failed to timely file with the Commission copies of its Children's Television Programming Reports for a period of twenty-two (22) quarters.¹¹ Action TV also admits to having failed to timely prepare its Commercial Limit Certifications for the third quarter of 2006, third quarter of 2010, and the fourth quarter of 2010.¹² Action TV also failed to upload to its e-pif in a timely manner copies of required public file documents prepared prior to 2013, including TV issues/programs lists, Commercial Limit Certifications and Class A Eligibility Certifications.¹³

B. License Renewal Application Filing Obligations

7. Section 73.3539(a) of the Rules requires a broadcast television license renewal application to be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed" and Section 301 of the Act prohibits a person or entity from transmitting a broadcast signal without a valid instrument of authorization. The Commission last granted the Station a license renewal on November 16, 2004, and the Station's license was scheduled to expire at 3:00 a.m. on Saturday, December 1, 2012. In accordance with Section 73.3539(a) of the Rules, Action TV was required to file its Form 303-S to renew the license of WHIG-CD on or before August 1, 2012. Action TV did not file its license renewal application until December 1, 2012 at 7:49 p.m.¹⁴ Therefore, the application was filed four months after the prescribed filing deadline, a violation of Section 73.3539(a). Action TV claims that because December 1 was a Saturday, the effective date of the license expiration would have been the next business day, December 3, relying on Section 1.4(l) of the Rules.¹⁵ We disagree. That Rule provides, "When Commission action is required by statute to be taken by a date that falls on a holiday, such action may be taken by the next business day (unless the statute provides otherwise)." The expiration of Action TV's license at 3 a.m. on December 1, 2012 was automatic, not requiring any action by the Commission, much less one required by statute. As a result of that expiration, the time-stamp placed on the License Renewal Application by the Commission's system indicates that the Station's license had expired at the time of filing, which, as Action TV admits, was four months late.

(Continued from previous page) _____

Television Broadcast Stations Reminded of the Upcoming Public Inspection Filing Deadline, Public Notice, 28 FCC Rcd 429 (2013) (providing a final remainder to broadcasters to upload copies of existing public file documents to their electronic public file); *see Second R&O*, 27 FCC Rcd at 4580 (establishing compliance periods for complying with broadcasters' new electronic public file requirement).

¹⁰ *See* License Renewal Application, Attachment 6 (FCC Violations in Current License Term), Exhibits 20 and 23.

¹¹ Action TV disclosed that the Children's Television Programming Reports for the following quarters were not filed in a timely manner: fourth quarter of 2005, first quarter of 2006, third quarter of 2006, first quarter of 2007, third quarter of 2007, fourth quarter of 2007, all four quarters of 2008, all four quarters of 2009, first quarter of 2010, third quarter of 2010, fourth quarter of 2010, all four quarters of 2011, and second quarter of 2016. *Id.*, Attachment 6 (FCC Violations in Current License Term) at 1.

¹² *Id.*

¹³ Since Action TV amended its license renewal application, staff discovered that Action TV failed to place into the Station's e-pif copies of its commercial limit certifications for first quarter 2014, fourth quarter 2014, second quarter 2015, and second quarter 2016. Action TV was notified of these deficiencies and immediately uploaded all documents.

¹⁴ As previously discussed, because Action TV's license renewal application was filed in CDBS on Saturday, December 1, 2012, it was not assigned an application number until December 3, 2012. *See supra* note 3.

¹⁵ *See* LMS File No. 0000008396, Attachment; LMS File No. 0000018893, Attachment.

8. As evidence of that fact, Action TV simultaneously filed with its License Renewal Application a request for special temporary authority seeking permission to continue operating the Station in the event the Commission determined that its license had expired. Action TV's first STA request was granted on December 18, 2012, with a stated expiration date of May 18, 2013.¹⁶ Action TV did not file for an extension of its STA request until March 14, 2016, nearly two-years after its first STA authorization had expired.¹⁷ Its second STA request was granted on May 17, 2016, with an expiration date of November 17, 2016. A third STA request was filed by Action TV on December 1, 2016.¹⁸ This request was granted with an expiration date of June 5, 2017. Based on these facts, WHIG-CD appears to have operated without a valid authorization in violation of Section 301 of the Act for a total of approximately three years since its license expired on December 1, 2012.¹⁹

9. Not only did Action TV file the Station's License Renewal Application late and after the Station's license expired, but upon filing, Division staff discovered that Action TV failed to respond to all required questions in the Application. Action TV acknowledges in its amended License Renewal Application that it failed to disclose numerous violations of the Rules, as discussed above, and to respond to the questions listed in Section IV of the application.²⁰ Section 73.3514(a) of the Rules provides that "[e]ach application shall include all information called for by the particular form on which the application is required to be filed...." On July 14, 2014, following a series of Division staff inquiries, Action TV amended its License Renewal Application to answer all required questions and disclose various violations.

C. Miscellaneous Filing Requirements

10. Section 73.624(g) of the Rules requires all digital broadcast television licensees and permittees, including digital Class A stations to annually remit a fee to the Commission of five percent of the gross revenues derived from all ancillary or supplementary services that are "feeable," as defined therein. It also requires that such digital licensees file a report, no later than December 1 of each year, stating whether or not they provided ancillary or supplementary services in the twelve months ending on the preceding September 30. Section 73.3615 of the Rules requires all AM, FM, TV, and LPTV stations, including Class A stations, as well as entities with attributable interests in the licensees of such stations, to file an ownership report using FCC Form 323 on a biennial basis.²¹ In addition, Section 73.2080(f)(1) of

¹⁶ File No. BLSTA-20121203AHG.

¹⁷ LMS File No. 0000008396

¹⁸ LMS File No. 0000018893.

¹⁹ If a license renewal application is filed after a station's license term has ended, continued operation that is not authorized by STA is considered unauthorized operation under Section 301 of the Act. Furthermore, Section 307(c)(3) of the Act, which keeps a license "in effect" during the pendency of a license renewal application does not apply if the Station failed to file a license renewal application before the station's license expired. *See e.g., Atlantic City Bd. of Ed.*, Memorandum Opinion & Order, 31 FCC Rcd 9380, 9383, n.21 (2016) (citations omitted). Furthermore, continued operation of a station following expiration of such special temporary authority also constitutes unauthorized operation under Section 301 of the Act. *See e.g., Westport Bd. of Ed.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3215, 3217 (Aud. Div. 2010); *Universal Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 24 FCC Rcd 12656 (MB 2009) (assessed forfeiture for unauthorized operation for failing to file the appropriate license renewal application prior to license expiration and continuing to operate following expiration of special temporary authority during the pendency of its renewal application).

²⁰ License Renewal Application, Attachment 1 (Portions of Application Being Revised).

²¹ Stations were first required to file a revised FCC Form 323 on or before November 1, 2009, with information current as of October 1, 2009, and to file biennially thereafter. In both 2011 and 2013 the Bureau extended the filing deadline. *See Promoting Diversification in the Broadcasting Services*, MB Docket No. 07-294, Order, 28 FCC Rcd 15811 (MB 2013) (extending the deadline to file 2013 Biennial Ownership Reports until December 2, 2013);

(continued...)

the Rules requires each licensee, including those with fewer than five full-time employees, to file a EEO Report in conjunction with their license renewal application. In its amended License Renewal Application, Action TV disclosed that it failed to file in a timely manner the Ancillary and Supplementary Services Reports from 2008 through 2011, its 2011 and 2013 Biennial Ownership Report, and the Station's most recent EEO Report.²²

D. Children's Television Programming Requirements

11. Under the CTA, as implemented by Section 73.671 of the Rules, a broadcast television licensee is required "to serve, over the term of its license, the educational and informational needs of children through both the licensee's overall programming and programming specifically designed to serve such needs."²³ Programming specifically designed to serve the educational and informational needs of children is defined by the Rules as "Core Programming."²⁴ In the *1996 Children's Television Order* revising our rules and policies governing children's programming, the Commission established a license renewal application processing guideline of at least three hours of Core Programming per week.²⁵ The Rules provide that the Bureau staff shall approve the CTA portion of any license renewal application where the licensee demonstrates that it has aired an average of at least three hours per week of Core Programming, as averaged over a six-month period.²⁶ A licensee will also be deemed to have satisfied this obligation and be eligible for staff approval if it demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children at least equivalent to airing three hours per week of Core Programming.²⁷ The renewal applications of licensees that do not meet these processing guidelines are referred to the Commission, where the licensees have a full opportunity to demonstrate compliance with the CTA.²⁸

12. An audit of the Station's Children's Television Programming Reports by Division staff revealed that between the first quarter of 2012 and fourth quarter of 2013 the Station aired the program entitled *All New Sports Show*. While no longer aired by the Station, the program *All New Sports Show* aired twice a week for sixty minutes and accounted for fifty-percent of the Station's claimed Core

(Continued from previous page)

Promoting Diversification in the Broadcasting Services, MB Docket No. 07-294, Order, 26 FCC Rcd 11464 (extending the deadline to file 2013 Biennial Ownership Reports until December 1, 2011).

²² License Renewal Application, Exhibit 2 and Attachment 1 (FCC Violations in the Current License Term) at 2.

²³ See 47 C.F.R. § 73.671(a).

²⁴ See 47 C.F.R. § 73.671(c).

²⁵ *Policies and Rules Concerning Children's Television Programming: Revision of Programming Policies for Television Broadcast Stations*, Report and Order, 11 FCC Rcd 10660, 10718 (1996) (*1996 Children's Television Order*). The Commission established rules setting forth seven criteria for evaluating whether a program qualifies as Core Programming: (1) the program has serving the educational and informational needs of children ages 16 and under as a significant purpose; (2) the program is aired between the hours of 7:00 a.m. and 10:00 p.m.; (3) the program is a regularly-scheduled weekly program; (4) the program is at least 30 minutes in length; (5) the program is identified as being specifically designed to educate and inform children through the on-screen display of the E/I symbol throughout the program; (6) the educational objective and the target child audience are specified in writing in the licensee's Children's Television Programming Report; and (7) instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides. *1996 Children's Television Order*, 11 FCC Rcd at 10696; 47 C.F.R. § 73.671(c).

²⁶ 47 CFR §§ 73.671(d), (e)(1).

²⁷ *Id.*

²⁸ *Id.*

Programming during this period.²⁹ Division staff raised questions as to whether *All New Sports Show* had a significant purpose of serving the educational and informational needs of children ages 16 and under. Based on the information provided and clips of the show viewed online, because of the question of whether the program qualified as Core Programming, Division staff determined that it could not clear the License Renewal Application under our processing guidelines pursuant to Section 73.671 of the Rules and therefore referred the matter to the Commission, as required.

13. As required by the CTA, we have considered whether Action TV “has served the educational needs of children through the licensee’s overall programming, including programming specifically designed to serve such needs.” The Commission and Action TV have negotiated the terms of the Consent Decree that terminates the Investigation. As part of the Consent Decree, Action TV has agreed to make a settlement payment of \$14,750 (Fourteen Thousand Seven Hundred and Fifty Dollars) to the U.S. Treasury, and to implement and maintain a Compliance Plan designed to ensure its future compliance with the children’s programming requirements, the Commission’s public file, EEO, Ancillary and Supplementary Services Report, Biennial Ownership Report, and license renewal application requirements contained in the provisions of the Act and Rules noted above.

III. TERMS OF THE AGREEMENT

14. Adopting Order. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Commission, which approval shall be evidenced by incorporation of the Consent Decree by reference in the Adopting Order.

15. Jurisdiction. Action TV agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and that the Commission has the authority to enter into and adopt this Consent Decree.

16. Effective Date. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission.

17. Violations. The Parties agree that any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

18. Termination of Investigation; Grant of Short-Term Renewal Application. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Commission agrees to terminate the Investigation. In consideration for the termination of the Investigation, Action TV agrees to the terms and conditions contained herein. The Commission further agrees to direct the Media Bureau to grant, absent any other restrictions, in conjunction with the adoption of this Consent Decree, the License Renewal Application, but to renew the license for the Station for only a period of two years from the Effective Date. Grant of the License Renewal Application is conditioned on Action TV fully and timely satisfying its obligation to make the Settlement Payment in the amount and manner called for by paragraph 20 of this Consent Decree. In exchange, Action TV agrees to implement and maintain the Compliance Plan, outlined below. The Commission further agrees that in the absence of new material evidence or failure by Action TV to satisfy the terms and conditions set forth in paragraphs 20 and 23 of the Consent Decree, the Commission will not use the facts developed, in whole or in part, from the Investigation through the Effective Date, or the existence of this Consent Decree to institute on its own motion or in response to any petition to deny or other third-party complaint or objection, any inquiries, investigations, forfeiture proceedings, hearings, or

²⁹ Each quarter between the first quarter of 2012 and fourth quarter of 2013 the Station reported an average of 3 hours of children’s programming aired per week. If the *All New Sports Show* was excluded from this calculation, the Station would have only aired an average of 1.5 hours of children’s programming per week over that time period.

other sanctions or actions against Action TV concerning the matters that were the subject of the Investigation. The Commission also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Action with respect to Action TV's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

19. Subsequent Investigations. Except as expressly provided herein, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Action TV with the Communications Laws. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints or other adjudicatory pleadings filed against Action TV for alleged violations of the Act or the Commission's rules or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaints or pleadings will be based solely on the record developed in that proceeding.

20. Settlement Payment. Action TV agrees to make a total settlement payment to the United States Treasury in the amount of Fourteen Thousand Seven Hundred and Fifty Dollars (\$14,750), with an initial payment of One Thousand Seven Hundred and Fifty Dollars (\$1,750) due within thirty (30) calendar days after the Effective Date. Action TV agrees to thereafter make an additional One Thousand Dollar (\$1,000) monthly payment by the first day of each month until the entire Settlement Payment is satisfied, with the first monthly payment occurring no later than July 1, 2017. Action TV acknowledges and agrees that upon execution of this Consent Decree, the Settlement Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).³⁰ Action TV shall send electronic notification of payment to Evan Morris of the Division at evan.morris@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN captioned above.³¹ An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that Action TV should follow based on the form of payment it selects:³²

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank –

³⁰ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

³¹ Payment may be made online at the Commission's Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Online payments do not require Licensees to submit FCC Form 159. Alternatively, payment may be made using FCC Form 159; detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³² Should Action TV have questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e mail at ARINQUIRIES@fcc.gov.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

21. Waivers. Action TV waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Commission issues an Adopting Order as defined herein. Action TV shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Action TV nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Action TV shall waive any statutory right to a trial *de novo*. Action TV hereby agrees to waive any claims it may have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

22. Admission of Liability. Action TV admits to the facts discussed in paragraphs 3-13 regarding whether the Station aired sufficient Core Programming, as defined in Section 73.671, and failed to meet the requirements of Sections 73.671, 73.3526, 73.3539(a), 73.3514(a), 73.624(g), 73.2080(f)(1), and 73.3615 of the Rules, the CTA, and Section 301 of the Act. By entering into this Consent Decree, Action TV makes no other admission of liability or violation of any law, regulation or policy, and the Commission makes no finding of any such liability or violation. Notwithstanding any other provision of this Consent Decree, it is expressly agreed and understood that if this Consent Decree, or paragraph 18 hereof, or both, are breached by the Commission, or are invalidated or modified to the signatories' prejudice by the Commission or any court, then and in that event the provisions of the immediately-preceding sentences shall be of no force or effect.

23. Compliance Plan. In recognition that Action TV's policies and practices regarding compliance with the Communications Laws can be enhanced to ensure compliance in the future, Action TV represents that it will adopt and implement a compliance plan at the Station, and at any station acquired by Action TV as well as any station licensed to Action TV that becomes newly subject to the requirements of the CTA, Act or Rules while the Compliance Plan remains in effect. A copy of the plan is set forth below. Action TV agrees, to the extent that it has not already done so, to implement the Compliance Plan upon issuance of the Adopting Order and to keep such Compliance Plan in effect until Commission action is taken on the Station's next license renewal application.

24. Invalidity. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

25. Subsequent Rule or Order. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except a rule or order specifically intended to revise the terms of this Consent Decree to which Action TV expressly consents) that provision will not be superseded by such rule or Commission order.

26. Successors and Assigns. Action TV agrees that the provisions of this Consent Decree shall be binding on its subsidiaries, affiliates, successors, assigns, and/or transferees.

27. Final Settlement. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

28. Modifications. This Consent Decree cannot be modified without the advance written consent of all Parties.

29. Paragraph Headings. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

30. Authorized Representative. The individual signing this Consent Decree on behalf of Action TV represents and warrants that he is authorized by Action TV to execute this Consent Decree and

to bind Action TV to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

31. Counterparts. This Consent Decree may be signed in any number of counterparts, each of which, when executed and delivered (including by pdf or facsimile), shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Federal Communications Commission

By:

Marlene H. Dortch
Secretary

Date

Action Community Television Broadcasting Network, Inc.

By:

Sandra Smith
General Manager
WHIG-CD, Rocky Mount, North Carolina

Date

Mary Beth Greenberg
Executrix of the Estate of Herbert Greenberg

Date

COMPLIANCE PLAN OF ACTION COMMUNITY TELEVISION BROADCASTING NETWORK, INC.

In order to ensure its future compliance with the CTA, Rules, and the Act, Action Community Broadcasting Television Network, Inc. (Action TV) will institute the following procedures for any television or radio station that is licensed, controlled or subsequently acquired by it. This Compliance Plan is meant to cover, but is not limited to, station WHIG-CD, Rocky Mount, North Carolina (Station). Unless otherwise provided, all terms defined in paragraph 2 of the Consent Decree apply to this Compliance Plan. The terms of this Compliance Plan shall remain in effect until Commission action is taken on the Station's next license renewal application.

1. Action TV will designate a Compliance Officer responsible for responding to employee questions, consulting with its outside FCC counsel regarding compliance matters, and ensuring all stations operate in compliance with the Communications Laws, as defined in paragraph 2(h) of the attached Consent Decree.
2. The Compliance Officer will oversee, as applicable, the acquisition, production, formatting and scheduling, and/or dissemination of information, regarding educational and informational (E/I) programs, the preparation and filing of Action TV's public file documents, the maintenance of its physical and electronic public files, and the preparation and filing of all other required FCC Forms, and payment of any necessary related fees, in order to ensure compliance with the FCC's related rules and policies.
3. Action TV agrees to air on each station subject to this Compliance Plan an average of four (4) hours per week of Core Programming, as defined by Section 73.671(c) of the Rules, as averaged over a six-month period, in order to satisfy its obligation under the CTA.
4. In acquiring E/I programming, the Compliance Officer will ensure that programs comply with the CORE Programming requirements set forth in Section 73.671(c) of the Rules, including that the programs offered as E/I are in furtherance of the educational and informational needs of children 16 years of age and under. No children's television program will be identified on the air as E/I if it has not been reviewed and approved by the Compliance Officer.
5. The Compliance Officer will conduct training for all station employees and management at least once every twelve (12) months on compliance with FCC Rules applicable to his or her duties at the station. A certification that the aforementioned training has occurred shall be placed in the electronic public inspection file for the Station within three (3) business days.
6. The Compliance Officer will train any new employee within five (5) business days of commencement of his or her duties at the station.
7. The Compliance Officer will work with outside legal counsel on an ongoing basis to obtain guidance on FCC compliance issues, to provide regular updates and notices on developments in the Communications Laws applicable to Action TV's stations and its stations' operations, and to review all applications, documents, and reports prior to filing with the FCC. In regard to the last matter, Action TV recognizes and acknowledges that any and all information provided to the FCC must completely and candidly set forth all relevant facts and circumstances, regardless of whether such submission may disclose a violation of the Rules or the Act.